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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 599

EDWARD A. LEAHY, PETITIONER,

vs.

STATE TREASURER OF OKLAHOMA, RAY O. WEEMS, AS STATE TREASURER, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR CERTIORARI FILED NOVEMBER 22, 1935.

CERTIORARI GRANTED JANUARY 6, 1936.

SUPREME COURT OF THE UNITED STATES

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[fol. a] **IN SUPREME COURT OF OKLAHOMA**

[File endorsement omitted]

No. 24635

EDWARD A. LEAHY, Plaintiff in Error,

v.

STATE TREASURER OF OKLAHOMA; RAY O. WEEMS, as State Treasurer; OKLAHOMA TAX COMMISSION, MELVEN CORNISH, W. D. HUMPHREY and JOHN T. BAILEY, as Members of the Oklahoma Tax Commission, Defendants in Error.

PETITION IN ERROR—Filed April 25, 1933

Comes now the above-named plaintiff in error and respectfully shows to the court that heretofore he filed his petition in the District Court of Osage County, Oklahoma, asking for judgment against the State Treasurer of Oklahoma, Ray O. Weems, as State Treasurer, and the Oklahoma Tax Commission, and Melvin Cornish, W. D. Humphrey, and John T. Bailey, as members thereof, in the sum of $11.99, the same being the amount paid by him to the State Treasurer as income tax for the year 1932, and at the time of payment of which he filed with the State Treasurer above-named and the Oklahoma Tax Commission above-named, notice that he would, within thirty days from the date of the payment of said tax, bring an action to recover the same; that, thereafter, the defendants in said action moved to remove the said cause to the District Court of Oklahoma County, and the same was, by order of the District Court of Osage County, removed to Oklahoma County; that the basis and grounds for the recovery of said tax was and is that this plaintiff in error is a member of the Osage tribe of Indians, duly enrolled as such, and [fol. b] that the income upon which said tax was based was income which he received as a member of the Osage tribe of Indians from the mineral resources of said tribe, as provided by the Act of Congress of June 28, 1906 (34 Stat. L. 539); that issues were joined in the district court and the allegations of plaintiff's petition with reference to the source of the income upon which the tax was based was

admitted, but the defendants alleged that this plaintiff in error was the holder of a certificate of competency, and did have such certificate of competency prior to the year 1932.

By way of reply, this plaintiff in error admitted that he did have a certificate of competency, and that the same was issued to him prior to the first day of January, 1932.

The cause came on for hearing before the District Court of Oklahoma County on the 28th day of March, 1933, upon stipulation between the parties that the court might render judgment upon the pleadings, without the taking of any evidence, (See case-made at page 42), and the court held in favor of the defendants and against the plaintiff.

Motion for a new trial was filed (see case-made page 46), and the same was overruled and journal entry of judgment entered (see case-made page 48).

The plaintiff in error complains of the judgment of the court in the matter, and alleges that the trial court committed error in the following particulars:

First: In overruling the motion for a new trial of the plaintiff in error.

Second: That the judgment and decision of the court rendered is contrary to law in that, under the Acts of Congress relating to the Osage tribe of Indians and the various [fol. c] treaties between the United States of America and the Osage tribe of Indians, the source of the income of the plaintiff in error was a trust property, held by the United States for the use and benefit of the Osage tribe of Indians, and, being a trust property, is not, under the constitution and laws of the United States and the various treaties between the United States and the Osage tribe of Indians, subject to taxation, and the income from the same is not subject to taxation, and the judgment and order of the district court is, therefore, in conflict with, and contrary to, the constitution and laws of the United States of America.

Third: That the judgment of the court is contrary to the facts as set out and stated in the pleadings.

Fourth: That the court erred in not rendering judgment in favor of the plaintiff and against the defendants in said action.

The transcript and case-made in said cause is hereto attached, made a part hereof, and marked "Exhibit A."

Wherefore, the plaintiff in error prays the court that the judgment and order of the District Court of Oklahoma County, Oklahoma, in this case be reversed and set aside, and that the said court be ordered and directed to enter judgment in favor of this plaintiff in error and against the defendants in error.

Leahy, Macdonald & Files, of Pawhuska, Oklahoma, Attorneys for Edward A. Leahy, Plaintiff in Error.

[fols. 1-3] [Caption omitted]

[fol. 4] IN DISTRICT COURT OF OSAGE COUNTY, OKLAHOMA

No. 14,917

EDWARD A. LEAHY, Plaintiff,

vs.

STATE TREASURER OF OKLAHOMA; RAY O. WEEMS, as State Treasurer; Oklahoma Tax Commission; Melven Cornish, W. D. Humphrey, and John T. Bailey, as Members of the Oklahoma Tax Commission, Defendants

PETITION—Filed Oct. 10, 1932

Comes now the above named plaintiff, and, for his cause of action against the above named defendants, and each of them, says:

I

That he is a member of the Osage Tribe of Indians, duly enrolled and allotted as such, under the Act of Congress of June 28, 1906 (34 Stat. L. 539), opposite the number 1437 of said tribe.

II

That on the 12th day of September, 1932, he filed with the Oklahoma Tax Commission, one of the above named defendant, an income tax return for the year 1931, a copy of which is hereto attached, marked "Exhibit A," and made a part hereof;

That on the same day he served notice upon the State Treasurer of Oklahoma that he had on said date paid the tax in accordance with the said income tax return, and that [fol. 5] he claimed said tax was not due, and that it was erroneously and illegally collected, and that within thirty days from that date he would file a suit to recover said tax, a copy of which notice is hereto attached, marked "Exhibit B", and made a part hereof;

That on said 12th day of September, 1932, he also served notice upon the Oklahoma Tax Commission, one of the above named defendants, that he had filed said tax return and had paid the tax in accordance with said return, and that he claimed that the same was illegally and erroneously collected, and that he would within thirty days from said date file suit in a proper court for a recovery of the same, a copy of which notice to the Oklahoma Tax Commission is hereto attached, marked "Exhibit C", and made a part hereof.

III

Plaintiff further says that that portion of the income shown on said return as income as a member of the Osage Tribe of Indians from the tribe's mineral resources came to him by reason of his membership in the Osage Tribe of Indians, and was paid to him by the disbursing agent of the Osage Indian Agency, under authority and direction from the Secretary of the Interior of the United States of America;

That as shown on said return he deducted as depletion on said $860.00, twenty-seven and one-half (27½%) per cent. of the same, or $260.44, leaving a total of $599.56 which this plaintiff claims was not subject to income tax, for the rea- [fol. 6] sons set out herein, and that the same was illegally and erroneously collected from his by the State Treasurer of Oklahoma and the Oklahoma Tax Commission, the above named defendant.

Plaintiff further says that the amount of tax erroneously and illegally collected, and paid by him, as set forth, on said sum of $599.56, was the sum of $11.99, and that he is entitled to a return of the same.

IV

Plaintiff further says that income received by him as a member of the Osage tribe of Indians from the

mineral interests or rights of the Osage tribe of Indians is not subject to the payment of state income tax, for the reason that the United States holds in trust for the use and benefit of the Osage tribe of Indians and the members thereof all of the mineral resources belonging to the Osage tribe of Indians situate in Osage County, Oklahoma;

That said minerals are held in trust for the Osage tribe of Indians by the United States, as aforesaid, under and by virtue of certain acts of Congress, to-wit:

The Act of Congress of July 15, 1870 (10 Stat. L. 335),

The Act of Congress, approved June 5, 1872 (17 Stat. L. 228),

The Act of Congress of March 3, 1873, (17 Stat. L. 530),

The Act of Congress, approved March 3, 1883 (22 Stat. L. 603),

[fol. 7] and under and by virtue of a certain deed made and executed by and between the Cherokee Tribe of Indians or the Cherokee Nation, by and through Dennis W. Bushyhead, Principal Chief, Richard M. Wolf and Robert B. Ross, delegates of said Cherokee Nation, as grantors, and the United States of America, in trust for the use and benefit of the Osage Tribe of Indians, as grantee, which said deed was made and executed, as aforesaid, on the 14th day of June, A. D., 1883, in accordance with the terms and conditions of the said last two above referred to acts of Congress, a copy of said deed, so made and executed by and between the Cherokee Tribe of Indians or the Cherokee Nation, and the United States, is hereto attached, marked "Exhibit D" and made a part hereof; and further, by reason of an Act of Congress approved June 28, 1906 (34 Stat. L. 539), which said last quoted act of Congress provides for the division and allotment of the lands and funds of the Osage Tribe of Indians in Oklahoma Territory, and for other purposes, and makes provision for the allotment of the lands of the Osage Indian Reservation to the members of the tribe thereof, and provides for the distribution of other property belonging to the said Osage tribe of Indians, and especially provides, among other things, that the oil, gas, coal and other minerals, covered by said lands, shall not be allotted to the individual members of said tribe, but shall be reserved to the use of said tribe for a period of twenty-five years, the royalties from said minerals to be paid to said tribe as provided in said act; and also under

[fol. 8] the Act of Congress of March 3, 1921 (41 Stat. L. 1249), which is an act to amend section 3, of the Act of Congress of June 28, 1906 (supra), and for other purposes, wherein it is provided that the reservation to the Osage Tribe of the oil, gas, coal, and other minerals covered by the lands for the selection and division of which provision is made in the act of June 28, 1906, are reserved to the Osage tribe for the period ending April 8, 1946, and also by virtue of the Act of Congress of March 2, 1929 (45 Stat. L. 1478), which specifically further provides for the reservation to the Osage tribe of Indians of said oil, gas, coal, and other minerals until the 8th day of April, 1958.

V

That, under and by virtue of said acts of Congress and said trust deed, heretofore referred to, the United States, through the Secretary of the Interior, distributes quarterly to the members of the Osage Tribe of Indians the proportionate share of each of said members of the funds accumulated to the tribe for the previous quarter, after making certain deductions for expenses of tribal government, as provided in said acts of Congress; and that said amount of $860.00, hereinabove referred to and set out in "Exhibit A" was money paid to this plaintiff as a member of the Osage tribe of Indians, as above set forth, during the year 1931, and that said minerals held in trust by the United States for the use and benefit of the Osage tribe of Indians, constitute a governmental agency, through which the United [fol. 9] States carries out its various treaty obligations to the Osage tribe of Indians and the duties imposed upon it by reason of said acts of Congress and also gives to the Osage tribe of Indians and the members thereof that protection and benefit which is intended by reason of said treaties and said acts of Congress, and that, for that reason, said income is not subject to be taxed by the State of Oklahoma, and the collection of said tax by the State Tax Commission from this plaintiff was in violation of his legal rights and contrary to the treaties and acts of Congress above referred to, and the policy of the United States in looking after and protecting the interests of the said Osage tribe of Indians and the members thereof, and was, therefore, illegal, and this plaintiff is entitled to the return of

that portion of the tax paid on his proportion of the income of the Osage tribe of Indians as hereinabove set forth, in the amount of $11.99.

VI

Plaintiff further says that, upon payment of the amount shown in "Exhibit A" to the state Tax Commission, to wit, $13.85, the said Tax Commission issued to the plaintiff its receipt therefor, a copy of which is hereto attached, marked "Exhibit E" and made a part hereof.

VII

Plaintiff further says that, under the laws of this state, when notice is served upon the State Treasurer and the State Tax Commission that the taxpayer will bring suit [fol. 10] within thirty days in a court of competent jurisdiction to recover the amount of the tax paid, it is the duty of the State Treasurer to withhold said money from the general funds of the state, and to place the same in a special fund to await the result of such action, if commenced, and that by reason thereof the State Treasurer now has said amount of $13.85 in his possession to await the result of this suit.

Wherefore, this plaintiff prays the judgment of this court against the said State Treasurer and the Oklahoma Tax Commission, for an- on account of the reasons hereinbefore set forth, in the sum of $11.99, and for an order directing the said State Treasurer to return said amount to this plaintiff, and for his costs in this behalf expended, and for such other and further relief to which he may be entitled.

Leahy, MacDonald & Files, Attorneys for Plaintiff.

Duly sworn to by Edward A. Leahy. Jurat omitted in printing.

[fol. 11] EXHIBIT "A" TO PETITION

File this return with the Oklahoma Tax Commission on or before March 15, 1932.

Receiving Stamp.

State of Oklahoma

Individual Income Tax Return for the Calendar Year 1931

Do not fill in.

Audited by —— ——.

For net incomes of not more than $5,000, derived chiefly from salaries and wages.

Date received —— —, ——.
Date Completed —— —, ——.

If income is derived, regardless of the amount, from a profession or business, including farming, or from rents or sale of property, use form 511.

Remarks ——.

Print name and address plainly

Name: Edward A. Leahy.
Occupation: Student.
Street and No. or R. F. D.: 319 East Main.
City or town: Pawhuska.
[fol. 12] $——.
Serial No. ——. County: Osage. State: Okla.

1. Of what state are you a resident? Okla.
2. Did you file an Oklahoma Income Tax Return for 1930? No.
3. Give former address if different from that shown on last years return ——.
4. Were you married and living with wife (or husband) on December 31, 1931? No.
5. Did your wife (or husband) derive income during 1931 from sources independent of your own? ——.
6. If so, has such income been included herein? ——.
7. If not, separate return is made, give full name of wife (or husband) ——.

8. Were you the head of a family? That is, regardless of marital status, were you, on December 31, 1931, supporting, in your household, maintained by you, one or more dependent members of your immediate family? No.

9. How many dependents were receiving their chief support from you on December 31, 1931? None.

10. In blank, on reverse side, give names, ages, and relationship to you of each individual included in your answer to Question 9.

11. Did you file a Federal Income Tax Return for 1931? No.

12. Did you receive any income not reported herein? No.

If so, fill in Schedule C on reverse side.

[fol. 13] Schedule A—See Instructions

1. Salaries, Wages, Commission, Bonuses, etc. (State name and address of employer: ——	Amount
(a) ——	
(b) ——	
(c) ——	
2. Other Income (give details)	
(a) Interest on loan to T. J. Leahy	$843.42
(b) Income as member of Osage tribe from tribe's mineral resources	860.00
3. Total income (Total lines 1 and 2)	$1,703.42

Deductions

4. Interest paid	
5. Taxes paid (not including Federal Income or for Special Improvements)	
6. Federal income taxes paid on income derived from Oklahoma	
7. Bad debts (itemize)	
8. Contributions (itemize)	
9. Other deductions authorized by law (itemize) 27½ per cent depletion on tribal income	260.44
10. Total deductions (Total lines 4 to 9)	
11. Net income (Line 3 minus line 10)	$1,442.98

Computation of the Tax

12. Net Income (from line 11)	$1,442.98
13. Less: Personal Exemption	750.00
[fol. 14] 14. Credit for dependents.	
15. Total exemptions (Total lines 13 and 14)	$750.00
16. Net amount subject to tax (line 12 minus line 15)	692.98
17. Total income tax (2% of amount shown in line 16)	13.85

Affidavit

STATE OF ——,
County of ——, ss:

I, Edward A. Leahy, being first duly sworn, depose and say that this return has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith, for the taxable year as stated.

Edward A. Leahy.

11 day of September, 1932.

Johnnie Mohon, Notary Public. (Seal.)

My commission expires Oct. 26, 1933.

This return was prepared by ——.

Follow instructions carefully. Answer each question fully.

Schedule B—for use in itemizing deductions (see Instructions).

Schedule C—For use in reporting income not shown in schedule A—See Instructions.

Character of Income From what source Amount.

[fol. 15] List of Defendants—See Instructions

Name in Full	Relationship	Age	Name in Full	Relationship	Age
.....	.....	...	.....	.....	...
.....	.....	...	.....	.....	...

EXHIBIT "B" TO PETITION

Instructions

To the State Treasurer of Oklahoma:

The undersigned, Edward A. Leahy, hereby notifies you that he has this day paid to you state income tax for the year 1931, in the amount of $13.85, and that he claims said tax not due, and erroneously and illegally collected, and you are hereby notified that he will, within thirty days, file suit to recover said tax, on the grounds and for the reason that the same is not due the State of Oklahoma, because it is a tax on income received by him as a member of the Osage Tribe of Indians, representing his share in the tribal income from the mineral resources of said tribe.

Dated this 12th day of September, 1932.

Edward A. Leahy, by T. J. Leahy, His Attorney.

Receipt of the above notice is hereby acknowledged this 12th day of September, 1932.

Ray O. Weems, State Treasurer of Oklahoma, by Hugh L. Harrell, Asst.

[fol. 16] EXHIBIT "C" TO PETITION

To the Oklahoma State Tax Commission:

You are hereby notified that the undersigned, Edward A. Leahy, has this day paid the state income tax for the year 1931 in the amount of $13.85; that he is a member of the Osage Tribe of Indians, duly enrolled as such, and that he claims said tax not due to the State of Oklahoma, and erroneously and illegally collected, because it represents tax on income derived from his share of the income of the Osage Tribe of Indians from its mineral resources, and that he will, within thirty days from this date, file suit for the recovery of the same.

Dated this 12th day of September, 1932.

Edward A. Leahy, by T. J. Leahy, His Attorney.

Receipt of the above notice is hereby acknowledged this 12th day of September, 1932.

Oklahoma State Tax Commission, by Melven Cornish.

EXHIBIT "D" TO PETITION

This Indenture made and entered into this fourteenth day of June A. D. eighteen hundred and eighty three, between the Cherokee Nation, by Dennis W. Bushyhead, Principal Chief, Richard M. Wolfe and Robert B. Ross, delegates of said Cherokee Nation, for and in behalf of said [fol. 17] Nation, of the first part, and the United States of America, in trust for the use and benefit of the Osage and Kansas Indians of the second part, Witnesseth: that,

Whereas by the sixteenth article of the treaty concluded July nineteenth, A. D. eighteen hundred and sixty six, between said Cherokee Nation and the United States, the said United States acquired the right "to settle friendly Indians on any part of the Cherokee Country west of the ninety six degree" of west longitude, under certain limitations therein mentioned, and

Whereas under authority of an Act of Congress approved June Fifty, A. D. eighteen hundred and seventy two, a certain tract of said country was set apart for the Great and Little Osage tribe of Indians, with a proviso that said Great and Little Osage tribe shall permit the settlement within the limits of said tract of the Kansas tribes of Indians; and

Whereas by virtue of a provision in the act of Congress of March third, eighteen hundred and seventy three, there has been transferred from the proceeds of sale of Osage lands in Kansas, and placed to the credit of said Cherokee Nation the sum of one million, ninety nine thousand, one hundred and thirty seven and forty one hundredths dollars $1,099,137.41) in payment for said tract of land; and

Whereas by an Act of Congress, approved March third A. D. nineteen hundred and eighty three, three hundred [fol. 18] thousand dollars ($300,000) was appropriated "to be paid into the treasury of the Cherokee Nation out of funds due under appraisement for Cherokee lands west of the Arkansas River" provided "that the Cherokee Nation through its proper authorities shall execute conveyances satisfactory to the Secretary of the Interior, to the United States in trust only for the benefit of the Pawnees, Poncas, Nez Perces, Otoes and Missourias and Osages now occupying said tract as they respectively occupy the same, before the payment of said sum of money;" now,

Therefore by authority of an Act of the National Council of the Cherokee Nation aforesaid, approved May eighth, eighteen hundred and eighty three, which recites "That Dennis W. Bushyhead, Principal Chief, Richard M. Wolfe and Robert B. Ross, delegates of the Cherokee Nation, are hereby authorized and empowered, in the name of the Cherokee Nation, to execute deeds of conveyance as required by said Act, March third, eighteen hundred and eighty three, for the tracts of Cherokee land for the benefit of the Pawnees, Poncas, Nez Perces, Otoes and Missourias and Osages, as they respectively occupy the same," said party of the first part, by the aforesaid principal chief and delegates, and in consideration of the payment of the sum of money mentioned in the Act of March third, eighteen hundred and eighty three, aforesaid, as due under appraisement for Cherokee lands west of the Arkansas River, and of the further sum paid under the Act of March third, [fol. 19] eighteen hundred and seventy three, as aforesaid, does by these present- bargain, sell, remise, release, relinquish, and confirm unto the said party of the second part, forever, in trust nevertheless and for the use and benefit of the said Osage and Kansas Indians, all those certain tracts of land lying and being in the Indian Territory embracing the following townships and fractional townships north, and east of the Indian Merid-an—the fractional townships being on the left bank of the Arkansas River:

Fractional townships twenty-four (24), twenty-five (25) and twenty-six (26), range two (2) east;

Fractional townships twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28) and twenty-nine (29), range three (3) east;

Fractional townships twenty-three (23) twenty-four (24), twenty-five (25), twenty-six (26) and twenty-seven (27) township twenty-eight (28) and fractional township twenty-nine (29), range four (4) east;

Fractional townships twenty-three (23) and twenty-four (24), townships twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and fractional township twenty-nine (29), range five (5) east;

Fractional townships twenty-two (22) and twenty-three (23), townships twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28) and fractional township twenty-nine (29), range six (6) east;

[fol. 20] Fractional townships twenty-one (21) and twenty-two (22), townships twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28) and fractional township twenty-nine (29), seven (7) east;

Fractional townships twenty-one (21) and twenty-two (22), townships twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28) and fractional township twenty-nine (29), range eight (8) east;

Fractional townships twenty (20) and twenty-one (21), townships twenty-two (22) twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28) and fractional township twenty-nine (29), range nine (9) east;

Fractional township twenty (20), townships twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28) and fractional township twenty-nine (29) range ten (10) east;

Fractional township twenty (20), townships twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28) and fractional township twenty-nine (29), range eleven (11) east;

Fractional townships twenty (20), twenty-one (21), [fol. 21] twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28) and twenty-nine (29), range twelve (12) east (according to a plat of lands annexed hereto, marked "A", and made a part of this conveyance; containing in all one million five hundred and seventy thousand, one hundred and ninety-six and thirty-hundredths acres (1,570,196.30) hereby granted). Under the act aforesaid, there has been set apart for the Kansas Indians, as provided by said act, the following numbered townships and fractional townships, being a part of the lands above described, and indicated upon the beforementioned plat;

Fractional townships twenty-seven (27), twenty-eight (28) and twenty-nine (29), range three (3) east;

Fractional township twenty-seven (27), township twenty-eight (28) and fractional township twenty-nine (29), range four (4) east;

The west half of sections three (3), ten (10), fifteen (15), twenty-two (22), twenty-seven (27) and thirty-two (32), and sections four (4), five (5), six (6), seven (7), eight (8), nine (9), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-eight (28), twenty-nine (29), thirty (30) and thirty-one (31), of township twenty-seven (27) north, range five (5) east;

The west half of sections three (3), ten (10), fifteen (15), twenty-two (22), twenty-seven (27) and thirty-four (34), [fol. 22] and sections four (4), five (5), six (6), seven (7), eight (8), nine (9), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32) and thirty-three (33), of township twenty-eight (28) north, range five (5) east;

The west half of sections fifteen (15), twenty two (22), twenty seven (27) and thirty four (34), and sections sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty one (21), twenty eight (28), twenty nine (29), thirty (30), thirty one (31), thirty two (32) and thirty three (33), of township twenty nine (29) north, range five (5) east; containing an area of one hundred thousand one hundred and thirty seven and thirty two hundredths acres (100,137.32), which aforesaid lands were paid for by the Osages to the Cherokees, and the Kansas Indians have paid for that portion assigned to them by proper transfer of the funds arising from the sale of their lands in Kansas, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands hereby granted:

To have and to hold the said premises, as above described, with the appurtenances, unto the said party of the second part, for the use and purposes aforesaid.

In witness whereof the party of the first part hath subscribed this conveyance by the said principal chief and [fol. 23] delegates, aforesaid, who have also hereunto set their hands and seals this fourteenth day of June A. D. eighteen hundred and eighty three.

The Cherokee Nation, by Dennis W. Bushyhead, (L. S.) Principal Chief. Richard M. Wolfe, (L. S.) Robert B. Ross, (L. S.) Delegates to the said Cherokee Nation. (Cherokee Seal)

Signed, sealed and delivered in the presence of Jos. K. McCammon, N. P. Loveredge, Wm. A. Phillips.

DISTRICT OF COLUMBIA,
County of Washington, ss:

On this fourteenth day of June A. D. eighteen hundred and eighty-three, before me a Notary Public in and for the District aforesaid personally came Dennis W. Bushyhead, Richard M. Wolfe and Robert B. Ross, to me known to be the persons who executed the foregoing instrument, and acknowledged the same to be their free act and deed, for the purposes and under the authority therein mentioned.

Geo. M. Lockwood, Notary Public. (Seal)

[fol. 24] EXHIBIT "E" TO PETITION

State of Oklahoma, Oklahoma Tax Commission Oklahoma City, Okla.

The return hereby acknowledged, as stated below, is accepted subject to audit and final determination of the correct tax liability.

The accompanying remittance is received subject to final audit and solvent credits. Penalties, as provided by law, will attach the same as if no remittance had been made, when, for any reason, checks, drafts, or other exchange are returned unpaid.

Receipt No.	Total Tax Payable	Amount Remittance Date Received	Unpaid Balance	Name of Taxpayer Street, F. F. D or Box	City or Town	Number State
114893	13.85	13.85 9-12-32 1931	0	Edward A. Leahy, 319 E. Main	Pawhuska	124381 Okla.

Acknowledgment of receipt of return and remittance.
5. Income Tax.
Oklahoma Tax Commission, Paul E. Long, Cashier.

[File endorsement omitted.]

Filed in District Court, Oklahoma County, Oklahoma, Nov. 26, 1932, Cliff Myers, Court Clerk, by J. E. Brown, Deputy.

[fol. 25] IN DISTRICT COURT OF OSAGE COUNTY

[Title omitted]

PRÆCIPE FOR SUMMONS—Filed Oct. 10, 1932

To the Clerk of Said Court:

Issue Summons in the above entitled cause, and direct the same to the Sheriff of Oklahoma County, the State of Oklahoma, for the defendants, State Treasurer of Oklahoma, Ray O. Weems, as State Treasurer, Oklahoma Tax Commission, Melven Cornish, W. D. Humphrey, and John T. Bailey, as members of the Oklahoma Tax Commission.

Amount claimed, $11.99, and interest from the — day of ——, 193-, at — per cent per annum and attorney's fees, $——.

Action brought for Recovery of State Income Tax.

Defendants required to answer on or before the 9th day of November, A. D. 1932. Make summons returnable 20th day of October, A. D. 1932.

Dated this 10th day of October, A. D. 1932.

Leahy, MacDonald & Files, Attorneys for Plaintiff.

[File endorsement omitted.]

Filed in District Court Oklahoma County, Oklahoma, Nov. 26, 1932, Cliff Myers, Court Clerk, by J. E. Brown, Deputy.

[fol. 26] IN DISTRICT COURT OF OSAGE COUNTY

[Title omitted]

SUMMONS AND RETURN—Filed Oct. 15, 1932

The State of Oklahoma to the Sheriff of Oklahoma County, Greeting:

You are hereby commanded to notify State Treasurer of Oklahoma, Ray O. Weems, as State Treasurer; Oklahoma Tax Commission, Melven Cornish, W. D. Humphrey and John T. Bailey, as members of the Oklahoma Tax Commis-

sion, that they have been sued by Edward A. Leahy, in the District Court of Osage County, State of Oklahoma, and that they must answer the petition of said plaintiff filed against them in the Court Clerk's office of said court, in the City of Pawhuska, in said county on or before the 9th day of November A. D., 1932, or said petition will be taken as true and judgment rendered accordingly.

You will make return of this summons on or before the 20th day of October, 1932.

[fol. 27] Given under my hand and the seal of this Court this 10th day of October, 1932.

Thos. Leahy, Sr., Court Clerk, by R. M. Marple, Deputy. (Seal.)

Suit brought for Recovery of State Income Tax.

If defendant fails to answer, plaintiff will take judgment for the sum of $11.99 and with interest thereon at the rate of —— per cent per annum from the — day of ——, 19—, and an attorney fee in the sum of $—— and all costs of this suit.

Thos Leahy, Sr., Court Clerk, by R. M. Marple, Deputy. (Seal.)

STATE OF OKLAHOMA,
County of Okla., ss:

Received this writ 11th October, 1932, o'clock — M., and as commanded therein, I summoned the following persons, defendants within named, at the times following, to-wit:

Ray O. Weems, as State Treasurer, Oct. 11, 1932.
Melvin Cornish, Oct. 11, 1932.
W. D. Humphrey, Oct. 11, 1932.
John T. Bailey, Oct. 11, 1932.
Okla. Tax Commission by serving Melvin Cornish, Chairman, Oct. 11, 1932.,

be delivering to each of said defendants, personally in said [fol. 28] county, a true and certified copy of the within summons, with all the endorsements thereon.

Sheriff Fees.

Service and return, first person	$.50
Serving 4 additional persons	1.00
Miles actually traveled 6	.60
5 copies of summons	1.25
Total Fees	$3.25

Stanley Rogers, Sheriff, Okla. County, by Art Trouster, Deputy, State Capitol.

[File endorsement omitted.]

Filed in District Court, Oklahoma County, Oklahoma, Nov. 26, 1932.

Cliff Myers, Court Clerk, by J. E. Brown, Deputy.

[fol. 29] In District Court of Osage County

[Title omitted]

Motion for Change of Venue—Filed Nov. 12, 1932

Come now the defendants herein and respectfully move the Court to grant a change of venue in this action and transfer said cause to Oklahoma County, Oklahoma, for the following reasons to-wit:

First: That the Judge of this Court because he was formerly guardian of members of the Osage tribe of Indians and a large number of citizens in said Osage County, Oklahoma, are subject to the State income tax and are similarly interested with plaintiff in the outcome of this litigation; and by reason of such that local prejudice exists whereby the defendants cannot obtain a fair and impartial trial in said Osage County, Oklahoma.

Second: That said Treasurer of the State of Oklahoma and the members of the Oklahoma Tax Commission maintain their place for the transaction of their official business in Oklahoma County, Oklahoma; and it would be considerably to the convenience of the defendants of said offices [fol. 30] to have said cause transferred to Oklahoma County.

Wherefore, defendants respectfully move that said change of venue be granted and said cause be transferred as aforesaid.

C. W. King, Attorney, Oklahoma Tax Commission.

[File endorsement omitted.]

Filed in District Court, Oklahoma County, Oklahoma, Nov. 26, 1932.

Cliff Myers, Court Clerk, by J. E. Brown, Deputy.

[fol. 31] In District Court of Osage County

[Title omitted]

Order Granting Change of Venue and Transferring Said Cause to Oklahoma County, Oklahoma—Filed Nov. 12, 1932

This cause coming on for hearing this 12 day of November, 1932, upon the application of defendants for a change of venue; and the plaintiff being present by and through his attorneys, Leahy, MacDonald & Files, and the defendants appearing by and through C. W. King, attorney for Oklahoma Tax Commission, representing the defendants; and the matter having been fully considered.

It is hereby ordered and adjudged that said application, and motion, be granted and this cause is hereby transferred, and the venue of said cause changed to Oklahoma County, State of Oklahoma, and to the District Court therein.

The Court Clerk of this County and State is hereby directed to transfer the original files in this cause to the Court Clerk of Oklahoma County, State of Oklahoma, and it is directed that said cause be docketed upon the regular docket of that court.

[fol. 32] Jesse J. Worten, District Judge.

O. K.

Leahy, MacDonald & Files, Attorneys for Plaintiff.

O. K.

C. W. King, Attorney for Defendants.

[File endorsement omitted]

Filed in District Court, Oklahoma County, Oklahoma, Nov. 26, 1932.

Cliff Myers, Court Clerk, by J. E. Brown, Deputy. Recorded book 157, page 558.

[fol. 33] In District Court of Oklahoma County, State of Oklahoma

No. 77,299

Edward A. Leahy, Plaintiff,

vs.

State Treasurer of Oklahoma, Ray O. Weems, as State Treasurer; Oklahoma Tax Commission, Melven Cornish, W. D. Humphrey, and John T. Bailey, as Members of the Oklahoma Tax Commission, Defendants.

Demurrer—Filed Dec. 24, 1932

Come now the defendants and demur to the petition of plaintiff herein and for ground of said demurrer say: that the petition does not state sufficient facts to constitute a cause of action in favor of plaintiff and against the defendants or any of them.

J. Berry King, Attorney General, by F. M. Dudley, [fol. 34] Assistant Atty. Gen'l. C. W. King, Attorney for Oklahoma Tax Commission.

[File endorsement omitted]

[fol. 35] In District Court of Oklahoma County.

[Title omitted]

Answer—Filed Feb. 21, 1933

Come now the defendants, State Treasurer of Oklahoma, Ray O. Weems and Oklahoma Tax Commission, Melven Cornish, W. D. Humphrey and John T. Bailey, members thereof, and for answer to the petition of the plaintiff filed herein allege and state:

First. Said defendants deny each and every material allegation contained in plaintiff's petition upon which said plaintiff seeks to recover, except such as are hereinafter admitted;

[fol. 36] Second. Defendants admit that the Oklahoma Tax Commission is preparing to and will, if not prevented, enforce the provisions of the Oklahoma Income Tax Law against the plaintiff in that said Oklahoma Tax Commission is seeking and will require said plaintiff to pay the income tax on the amount of income set up in his said return attached to and made a part of plaintiff's petition.

Third. Further answering, defendants, Ray O. Weems, State Treasurer, and the Oklahoma Tax Commission, allege that the amount paid, to-wit: $11.99, as alleged in plaintiff's petition, was paid as therein alleged and is now being held in the depository of the State of Oklahoma to abide the decision of this court.

Fourth. Further answering, defendants state that the plaintiff, Edward A. Leahy, is a member of the Osage tribe of Indians, enrolled as such and receives his pro rata quarterly payments from the trust fund being administered by the Federal government for the benefit of Osage Indians derived from the mineral resources belonging to Osage Indians; that heretofore, to-wit, on 24th day of May, 1928, a certificate of competency was issued to said plaintiff, copy of which said certificate is hereto attached and made a part hereof. That plaintiff is still in the full enjoyment of the said certificate of competency. Defendants further allege that the issuance of a certificate of competency to a member of the Osage tribe of Indians operates to all intents [fol. 37] and purposes as a removal of restrictions from said member and that thereafter all income derived by any such member of the Osage tribe whether from Government payments from trust funds belonging to the tribe in common derived from mineral resources as hereinabove stated or from other sources is subject to the provisions of the Income Tax Law of the State of Oklahoma, and that there is no exemption or immunity from the provisions of said Act which operate to relieve the said plaintiff herein from the payment of income taxes due the State of Oklahoma as shown by his said report.

Fifth. Defendants further allege that the reason that said funds belonging to this plaintiff from which the income in question is derived is handled by the Federal Government because of a large number of other members of the Osage tribe of Indians together with this plaintiff and other similar situated, are tenants in common of said fund and joint owners thereof and that so long as the said fund is administered by the Government for the benefit of the members of the tribe who have not been declared to be competent and to whom certificate of competency had not been issued, there is no practical method of dividing or distributing the respective interests of said Indians to whom certificate of competency had been issued separately and apart from the handling and distribution of the fund for the benefit of the non- competent Indian but for which fact the Government would cease to administer said funds.

[fol. 38] Wherefore, having fully answered defendants pray for judgment against the said plaintiff in the amount of $11.99 together with legal interest thereon at the rate of 12% per annum from the date of the accrual of said tax, and for costs.

C. W. King, Attorney for Oklahoma Tax Commission.

[File endorsement omitted.]

[fol. 39] In District Court of Oklahoma County

[Title omitted]

Reply—Filed Feb. 21, 1933

Comes now the above named plaintiff and, for his reply to the answer of the above named defendants, denies generally and specifically each and every material allegation therein contained, except such as admit the allegations of plaintiff's petition, and except such as may hereinafter be specifically admitted.

Further answering, the plaintiff admits that a certificate of competency was issued to him by the Secretary of the Interior of the United States of America, as set out in the [fol. 40] answer of the defendants, and that the copy attached to the answer of the defendants is a true and correct copy of said certificate of competency.

Wherefore, having fully replied to the answer of the defendants, the plaintiff prays for the relief as prayed for in his petition herein.

Leahy, MacDonald & Files, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 41] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

MINUTE ENTRY

Be it remembered, That the following Minute of the Court appears of record in the above styled and numbered cause under date of March 25th, 1933:

"Ent. Specially assigned before Judge Hill Tuesday morning 9 a. m. (Hill.)"

[fol. 42] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

MINUTE ENTRY

Be it remembered, That the following Minute of the Court appears of record in the above styled and numbered cause under date of March 28th, 1933:

"Ent. Comes on for hearing. Cause submitted on the pleading. Judgment for Defendants all as per J. E. (Hill)".

[fol. 43] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

MOTION FOR NEW TRIAL—Filed March 28, 1933

Comes now the plaintiff and moves the court to grant a new trial in the above-entitled cause for the reasons following, to-wit:

I

The judgment and decision of the court is contrary to law.

II

Error of law occurring at the trial and excepted to by the plaintiff.

[fol. 44] III

The judgment is contrary to the facts.

Leahy, MacDonald & Files, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 45] In District Court of Oklahoma County, State of Oklahoma

No. 77,299

Edward A. Leahy, Plaintiff,

vs.

State Treasurer of Oklahoma, Ray O. Weems and Oklahoma Tax Commission, Melven Cornish, W. D. Humphrey and John T. Bailey, Members Thereof, Defendants.

Journal Entry of Judgment—Filed April 1, 1933

Now, on this 28th day of March, 1933, this cause comes regularly on for trial in the above entitled court. Plaintiff appears by his attorneys, Leahy, Macdonald & Files; and the defendants appear by their attorneys C. W. King and W. C. Hall. Thereupon the parties hereto waived a jury and agreed to submit the cause to the court for its decision upon the pleadings.

Thereupon the court hears the arguments of counsel for [fol. 46] and on behalf of plaintiff and for and on behalf of the defendants and, being duly advised in the premises, finds the issues in favor of the defendants and against the plaintiff and that the plaintiff is not entitled to recover in this action as prayed for by him.

It is therefore, ordered, adjudged and decreed by the court that the said plaintiff take nothing by reason of this action, and that the defendants have their costs; to which finding and judgment of the court the plaintiff excepts and his exception is allowed.

Thereupon the plaintiff presents a motion for a new trial, and, after hearing arguments on the same and being fully advised in the premises, the court finds that said motion for a new trial should be denied.

It is therefore, by the Court ordered and decreed that the motion of the plaintiff for a new trial be and the same is hereby denied; to which finding and order of the court the plaintiff excepts, and his exception is allowed.

Thereupon the plaintiff gives notice in open court of his intention to appeal this case to the Supreme Court of the State of Oklahoma and asks that the court direct the clerk to note the same upon the journals of the court.

Thereupon the plaintiff asks and for good cause shown is given thirty days in which to prepare a case-made, or transcript of the record, for filing in the Supreme Court and to serve the same upon the defendants, and the defend-
[fol. 47] ants are given five days in which to suggest amendments thereto, the same to be signed and settled by the court upon three days notice from either party.

O.K. R. P. Hill, Judge.

Leahy, MacDonald & Files, Attorneys for Plaintiff.

C. W. King & W. C. Hall, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 48] RECITAL AS TO RECORD

The above and foregoing contains a full, true, correct and complete copy of all the pleadings, motions, orders, judgments and proceedings had, made and rendered in said cause, and also contains all of the evidence both oral and documentary introduced or offered on the trial of said cause, together with the objections of counsel thereto, the rulings and remarks of the Court thereon and the exceptions taken thereto, and is in all respects a full, true, correct and complete transcript and case-made.

[fol. 49] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 50] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

CERTIFICATE OF ATTORNEYS

We hereby certify that the foregoing case-made and transcript contains a full, true, correct and complete copy and transcript of all the proceedings in said cause, including all pleadings filed and proceedings had, all the evidence offered or introduced by both parties, all orders and rulings made and exceptions allowed, and all of the record upon which the judgment and journal entry in said cause were made and entered, and that the same is a full, true, correct and complete transcript and case-made.

Witness our hands this 24th day of April, 1933.

Leahy, MacDonald & Tiles, Attorneys for Plaintiff.

[fol. 51] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

ACKNOWLEDGMENT OF SERVICE OF TRANSCRIPT AND CASE-MADE

We, the undersigned attorneys of record of the defendants in the above entitled cause, do hereby acknowledge service of the foregoing transcript and case-made to have been made upon us this 24th day of April, 1933.

C. W. King, W. C. Hall, Attorneys for Defendants.
J. Berry King, Attorney General by J. B. Dudley, Assistant Atty. Genl.

[fol. 52] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

NOTICE OF SETTLEMENT OF TRANSCRIPT AND CASE-MADE

To C. W. King and W. C. Hall, attorneys of record for the defendants:

You are hereby notified that on the 25th day of April, 1933, at 9:00 o'clock a. m., or, as soon thereafter as counsel

can be heard, the Transcript and Case-made in said cause, with amendments suggested by you, if any, will be presented to the Honorable R. P. Hill, Judge of said Court, in his chambers in the City of Oklahoma City, Oklahoma County, State of Oklahoma, for settlement.

Leahy, MacDonald & Tiles, Attorneys for Plaintiff.

Service of the above Notice is hereby accepted on this 25th day of April, 1933.

J. Berry King, Atty. Genl.; J. B. Dudley, Asst. Atty. Genl.; C. W. King, Atty. for Okla. Tax Commission; W. C. Hall, Attorneys for Defendants.

[fol. 53] In District Court of Oklahoma County

[Title omitted]

Stipulation of Attorneys as to Record

It is hereby stipulated and agreed by and between the parties hereto that the foregoing transcript and case-made contains a full, true, correct and complete copy and transcript of all the proceedings in said cause, including all pleadings filed and proceedings had, all the evidence offered and introduced, all objections of counsel, all the orders and rulings made and exceptions allowed and all of the record upon which the judgment and journal entry in said cause were made; and the same is a full, true, correct and complete transcript and case-made; and the defendant waives the right to suggest amendments to said transcript and case-made and hereby consents that the same may be settled immediately and without notice, and hereby joins in the request of the plaintiff that the Judge of said court settle the same and order the same certified by the court clerk and filed according to law.

Dated this 25th day of April, 1933.

Leahy, MacDonald & Tiles, Attorneys for Plaintiff.
J. Berry King, Atty. Genl.; J. B. Dudley, Asst. Atty. Genl.; C. W. King, Atty. Okla. Tax Com.; W. C. Hall, Attorneys for Defendants.

[fol. 54] In District Court of Oklahoma County.

[Title omitted]

Order Settling Transcript and Case-made

I, the undersigned Judge of the District Court of Oklahoma County, Oklahoma, and the trial judge of said above entitled cause, do hereby certify that the foregoing was presented to me as a transcript and case-made in the action above entitled, and due and legal service of this transcript and case-made having been made upon the attorneys of record for the above styled defendants, and the attorneys of record for the plaintiff and for the defendants having stipulated that the above and foregoing is a full, true, correct and complete transcript and case-made, and having waived the suggestion of amendments and stipulated that said transcript and case-made should be signed by me immediately and without notice, I now sign and settle the same as a full, true, correct and complete transcript and case-made, and direct that it be attested and filed by the court clerk according to law.

Witness my hand, this 25th day of April, 1933.

Attest:

R. P. Hill, District Judge. Cliff Meyer, Court Clerk, Oklahoma County, State of Oklahoma. By J. E. Brown, Depy.

[fol. 55] [File endorsement omitted]

In Supreme Court of Oklahoma

No. 24,635

Edward A. Leahy, Plaintiff in Error,

vs.

State Treasurer of Oklahoma, Ray O. Weems, as State Treasurer; Oklahoma Tax Commission, Melven Cornish, W. D. Humphreys, and John T. Bailey, as Members of the Oklahoma Tax Commission, Defendants in Error.

Syllabus

1. Where a member of the Osage Tribe of Indians has received a certificate of competency by authority of the Act

of Congress of June 28, 1906, the income received by him as his pro rata share of the revenues derived from the sale of mineral resources of said tribe is free from all Federal restrictions and is taxable by the State.

Appeal from the District Court of Oklahoma County, Hon. R. P. Hill, Judge

Action to recover money paid as income tax under protest. Judgment for defendants, and plaintiff appeals.

Affirmed.

Louis N. Stivers, T. J. Leahy, C. S. MacDonald, and F. W. Files, for Plaintiff in Error. C. W. King, A. L. Herr, for Defendants in Error.

[fol. 56] OPINION—Filed June 18, 1935

GIBSON, J.:

The parties will be referred to herein as they appeared in the trial court.

The plaintiff commenced this action in the District Court to recover a sum of money paid to the State of Oklahoma as income tax for the year 1931, alleging that the amount so paid was illegally assessed against him and collected by the defendants. From a judgment in favor of the defendants, plaintiff has appealed.

The plaintiff is a member of the Osage Tribe of Indians and duly enrolled as such under the Act of Congress of June 28, 1906, and under the authority of said Act a Certificate of Competency was issued to him on the 24th day of May, 1924. The tax sought to be imposed by the State under Chapter 66, Article 7, Session Laws 1931, is an income tax upon the plaintiff's pro rata share of the income derived from the sale of the common mineral resources belonging to said tribe.

It is the contention of the plaintiff that, since the mineral resources of the Osages remain restricted and nontaxable by the State under the provisions of the Act of June 28, 1906, and successive Acts of Congress, the income derived therefrom by the individual members of the tribe is also non-taxable by the State; and further, since under the authority of said Act the United States holds said resources in trust for said tribe, the act of the State in attempting to collect such tax amounts to an attempt on the part of the State to levy a tax on a Federal instrumentality.

In support of his contention the plaintiff cites numerous authorities, some of which are highly persuasive. We are [fol. 57] of the opinion, however, that the case of Choteau v. Burnett, 283 U. S. 691, 75 L. Ed. 1353, is controlling upon this court on the question presented herein, and we feel constrained to adopt the rule laid down and to follow the reasoning expressed by the Supreme Court of the United States in that case.

The facts in Choteau v. Burnett, supra, were in all respects the same as the facts in the case at bar, except the question there presented was whether the United States had authority to levy and collect a tax against a like income of an Osage Indian under the General Revenue Act of 1918. The question was decided in the affirmative, and the Court, in fixing the status of the Indian with reference to the particular property in question, considering the same in the light of the applicable Acts of Congress, reasons and holds as follows:

(After referring to the Certificate of Competency issued to the plaintiff and the Act authorizing same.)

"The petitioner, then, was competent to hold and make any use (except to grant mining leases) of all his lands. All except his homestead were taxable, and were freely alienable without control or supervision of the government. His share of the royalty from oil and gas leases was payable to him, without restriction upon his use of the funds so paid. It is evident that as respects his property other than his homestead his status is not different from that of any citizen of the United States. In the process of gradually changing the relation between the Indian and the government he has been, with respect to the income in question, fully emancipated. (Compare United States v. Waller, supra). It is true, as petitioner asserts, that as to his homestead he still remains a restricted Indian. But this fact is only significant as evidencing the contrast between his qualified power of disposition of that property and his untrammeled ownership of the income in controversy. The latter was clearly beyond the control of the United States. The duty to pay it into petitioner's hands, and his power to use it after it was so paid, were absolute. Work v. Mosier, 261 U. S. 352; Work v. Lynn, 266 U. S. 161. The claim that with respect to this income the petitioner was

restricted, and therefore exempt from the tax laid by Sections 210 and 211 (2) must fail."

[fol. 58] Although in the instant case the State of Oklahoma and not the Federal Government is attempting to levy and collect the tax, the reasoning of the court in Choteau v. Burnett, supra, is fully applicable to the case at bar, and the holding therein is controlling upon this court. In that case the Supreme Court of the United States has definitely fixed the status of an Osage Indian with relation to the income in question; the plaintiff here occupies the same position as the taxpayer in that case with reference to Federal restrictions, and the court there has established the existence of all requisites to taxing jurisdiction in the State of Oklahoma. His share of the royalty from oil and gas leases was payable to him without restrictions upon his use of the funds so paid; his status is no different from that of any citizen of the United States. In the process of gradually changing the relation between the Indian and the government, he has been, with respect to the income in question, fully emancipated; his ownership in the property is untrammeled; the duty on the part of the government to pay the income into his hands and his power to use it after it was so paid, were absolute. The government had fully released its control.

It is plain that the income here in question was free from government restrictions, and was not subject to control by any Federal agency. Therefore a tax levied by the State could not be a direct burden upon a governmental instrumentality, and could not be termed an interference by the State with the operations of the Federal Government. Indian Motorcycle Co. v. United States, 283 U. S. 567, 75 L. Ed. 1275.

[fol. 59] It follows that the plaintiff's income is not restricted property, and is not under the control of any governmental agency within the meaning of the Acts of Congress, and is therefore taxable by the State of Oklahoma.

The judgment of the trial court is affirmed.

Osborn, V. C. J., and Bayless, Busby, Phelps, & Corn, JJ., concur.

McNeill, C. J., and Riley, J., dissent. Welch, J., absent.

[fol. 60] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING—Filed June 27, 1935

Comes now the above named plaintiff in error, Edward A. Leahy, and respectfully represents to the court that on June 18, 1935, a decree and judgment was rendered by this court in said cause affirming the judgment and decree of the lower court and holding that the tax imposed by the State under Chapter 66, Article 7, Session Laws 1931, on the income derived from the sale of the common mineral resources belonging to the Osage Tribe of Indians in said state, was valid and enforcible and that plaintiff in error was liable for his pro rata share of such tax.

The plaintiff in error says said decision overlooked questions decisive of this case, and duly submitted by counsel and set out in their brief filed herein, and is in conflict with an express statute and controlling decisions which were called to the attention of the court in the brief of plaintiff in error.

Wherefore, plaintiff in error prays that a rehearing of said cause be granted by your Honorable Court.

McDonald & Files, Attorneys for Plaintiff in Error.

[fol. 61] Brief

We feel there is nothing we can add to what has been already said regarding the questions in this case, that will be of any particular aid to the court. However, we are so confident of our position and that the holding of this court is in direct conflict with the rule laid down by the Supreme Court of the United States in the cases cited in our brief that we trust further consideration may be given thereto and in accordance with the thought expressed in the two following extracts from our brief:

"It is entitled to consideration that statutes are silent on the right to tax property of members of the tribe other than real estate, but the statutes are not silent on the question that the personal property involved in this action is

trust property until turned over to the allottee. They are not trust property by virtue of any independent act of the Secretary of the Interior, but they are trust property by virtue of the laws with reference thereto. In construing statutes with reference to Indian matters, the requirement is that the construction shall be made which is most favorable to the Indian, and to that extent all legislation affecting Indians a different rule prevails that that which prevails with reference to the construction of other statutes." (p. 19.)

"Much stress was put upon the case of Chouteau v. Burnett, 283 U. S. 691, 75 L. Ed. 1353, in the lower court, but this case is not applicable in any way to the issues here. It was strictly a federal case in which the court held that Congress had the right to tax the income of an Osage Indian if it saw fit to do so and that the income tax statute was sufficiently broad to include the income of a member of the Osage Tribe of Indians with a certificate of competency; but the Supreme Court, as stated in Jaybird Mining Company v. Weir, supra, has distinctly held that the United States could impose a tax on its own instrumentalities, and the fact that it did so did not mean that the state could impose a tax." (p. 52.)

Respectfully submitted, Macdonald & Files, Attorneys for Plaintiff in Error.

[fol. 62] IN SUPREME COURT OF OKLAHOMA

ORDER DENYING PETITION FOR REHEARING—September 25, 1935

The clerk is hereby directed to enter the following orders:

24,635. Edward A. Leahy v. State Treasurer of Oklahoma. Petition for rehearing denied. McNeill, C. J., Osborn, V. C. J., and Riley, J., dissent.

Edwin R. McNeill, Chief Justice.

Attest:

Andy Payne, Clerk.

[fol. 63] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

DISSENTING OPINION ON REHEARING—Filed Sept. 25, 1935

McNEILL, C. J.:

I am unable to agree with the conclusions announced by the Court and in view of the importance of the question I most respectfully indicate the grounds of my dissent.

The question involves the right of the State of Oklahoma to collect an income tax on the funds paid to a member of the Osage Tribe of Indians who had received a certificate of competency. These funds were derived from the bonuses, rentals and royalties paid by the lessees of the tribal mineral leases which had been given with the approval of the Secretary of the Interior. The funds obtained from these mineral sources, under the Congressional Act of June 28, 1906, are held in trust by the United States and placed to the credit of the individual member of the Osage Tribe according to the authorized roll of membership, or their heirs on the basis of a pro rata division.

It is the contention of the plaintiff in error, a member of said tribe, that the pro rata shares of these funds received by him is not subject to the state income tax; that the State of Oklahoma is without jurisdiction or authority to assess or collect the same, and that he should have judgment for the recovery of the tax paid under timely protest.

On the other hand, the State maintains that the issuance of a certificate of competency to a member of the Osage tribe of Indians was in effect a removal of restrictions on the land of plaintiff except as to the sale of his homestead and that plaintiff, after receiving such certificate of competency, was entitled to receive his pro rata share of said trust fund, free from all restrictions or control by the Federal Government; that the Acts of Congress of June 28, [fol. 64] 1906, and of March 3, 1921, removed all restrictions of plaintiff as to the funds herein involved; and that such funds, by reason thereof, became subject to state taxation.

The trial court sustained the tax. This court affirms that judgment. In my opinion this is error.

It is my view that the State is without power or authority to impose an income tax on the funds in question for the primary reason that the mineral reserves under the lands of the Osage Tribe of Indians are held in trust with the United States as a Federal instrumentality, partaking of the nature of a communal property interest, by virtue of treaties which the United States entered into with said tribe on November 10, 1808, and September 29, 1865, (Kappler's Laws and Treaties, Vol. 2, page 95, 878), and, the Osage Allotment Act (34 Stat. L. 539) passed by Congress on June 28, 1906; that the Federal instrumentality is exempt from the state taxing power; that this is not a tax upon the individual Indian but it is a tax upon these mineral resources which are clearly a part of the permanent taking of the corpus of the land which permanently depletes its value and which reserves were purchased by the Osage Tribe with its tribal funds; that it does not follow that the state can impose a tax on such a fund, or corpus of the land, for the same reason that it is within the power of the United States Government to subject these mineral resources to a Federal tax; that the State has a limited power under this class of property and cannot subject the same to the common burden. It is my opinion that these views are supported by the following authorities: Chouteau vs. Burnett, 283 U. S. 691, 75 L. Ed. 1353; Gillespie v. Okla., 257 U. S. 501, 66 L. Ed. 338; Shaw vs. Gibson Zahniser Oil Corp., 276 U. S. 575, 72 L. Ed. 709; Pollock vs. Farmers Loan & Trust Co., 157 U. S. 425, 39 L. Ed. 759; Weston v. Charleston, 27 U. S. 2 Pet. 449, 7 L. Ed. 48; Choate vs. Trapp, 224 U. S. 665; Work v. U. S. ex-rel., Mosier, 261 U. S. 352, 57 L. Ed. 693; Parker v. Riley, 250 U. S. 66, 63 L. Ed. 847; Cuff vs. Kosloskey, 165 Okla. 135, 25 Pac. (2d) 290; Mariwether vs. Lovett, 166 Okla. 73, 26 Pac. (2d) 200; State vs. Snyder, 29 Wyo. 163, 212 Pac. 758; State vs. Hatcher, (Tex.) 281 S. W. 192.

There is no dispute as to the facts nor as to the procedural method to recover the tax in question. It is conceded that plaintiff in error is a member of the Osage Tribe of Indians to whom a certificate of competency was issued by the Secretary of the Interior on May 24, 1924. During the year 1932, plaintiff received, as a member of such tribe, the amount in question as his pro rata share of the funds dervied from said mineral resources over which the govern-

ment specifically retained control and held in trust for the Osage Tribe of Indians, which express mineral restrictive feature, so far as I have observed, does not appear in any other Congressional Act relating to other tribes of Indians.

On November 10, 1808, the United States entered into a treaty with the Osage Tribe of Indians whereby the United States recognized said tribe as a political entity and placed the Great and Little Osage Nations under its protection and assumed the position of guardian and protector of said [fol. 65] tribe. This guardianship over the tribe has never been abandoned by the Federal Government and it remains solely with Congress to determine when it shall cease. United States vs. Ramsey, Wm. K. Hale, 271 U. S. 468, 70 L. Ed. 1039.

The Osage Tribe of Indians, in 1883, purchased their lands with their own tribal funds from the Cherokee Tribe and this land, surface and mineral rights, was held in trust by the United States for the use and benefit of said tribe. Under the act of 1906, the tribal lands were divided, in so far as the surface was concerned, in severalty among the members according to the authorized tribal rolls, and tribal deeds were issued with certain limitations, reservations and restrictions. In none of the Acts of Congress is there to be found any relinquished control by Congress over the minerals lying in and under said tribal lands. Tayrien vs. Tayrien, 51 Fed. 884; De Noya v. Arrington, 163 Okla. 44, 20 Pac. (2d) 563.

Under the Act of June 28, 1906, supra, (34 Stat. at Large 539, 543) Congress retained continuing control over these mineral resources. The act provided in part as follows:

"That the oil, gas, coal, or other minerals covered by the lands for the selection and division of which provision is herein made, are hereby reserved to the Osage Tribe for a period of twenty-five years from and after the eighth day of April, nineteen Hundred and six; and leases for all oil, gas, and other minerals covered by selection and division of land herein provided for, may be made by the Osage Tribe of Indians through its tribal council, and with the approval of the Secretary of the Interior, and under such rules and regulations as he may prescribe; Provided, that the royalties to be paid to the Osage Tribe under any mineral lease so made shall be determined by the President of

the United States; and Provided further, that no mining of or prospecting for any of said mineral or minerals shall be permitted on the homestead selections herein provided for without the written consent of the Secretary of the Interior; Provided, however, that nothing herein contained shall be construed as affecting any valid existing lease or contract."

The seventh paragraph of section 2 of said act also provided:

"That nothing herein shall authorize the sale of the oil, gas, coal or other minerals covered by said lands, said minerals being reserved to the us- of the tribe for a period of twenty-five years, and the royalty to be paid to said tribe as hereinafter provided."

In the case of Pollock vs. Farmers Loan and Trust Co., 157 U. S. 427, 39 L. Ed. 759, it was held that a tax on the rents or income of real estate was a direct tax within the [fol. 66] meaning of the Constitution of the United States. That case has been very fully reported and contains all the briefs and the stenographer's reports of all the arguments of counsel.

After such an exhaustive presentation Mr. Justice Fuller, in part, said:

"As according to the feudal law, the whole beneficial interest in the land consisted in the right to take the rents and profits, the general rule has always been, in the language of Coke, that "if a man seized of land in fee by his deed granteth to another the profits of those lands, to have and to hold to him and his heirs, and maketh livery *secundum forman chartae*, the whole land itself doth pass. For what is the land but the profits thereof?" Co. Lit. 45. And that a devise of the rents and profits or of the income of lands passes the land itself both at law and in equity. 1 Jarm Wills (5th ed.) *798 and cases cited.

The requirement of the Constitution is that no direct tax shall be paid otherwise than by apportionment—the prohibition is not against direct taxes on land, from which the implication is sought to be drawn that indirect taxes on land would be constitutional, but it is against all direct taxes—and it is admitted that a tax on real estate is a

direct tax. Unless, therefore, a tax upon rents or income issuing out of lands is intrinsically so different from a tax on the land itself that it belongs to a wholly different class of taxes, such taxes must be regarded as falling within the same category as a tax on real estate *eo nomine*. The name of the tax is unimportant."

In that case reference was made to Weston vs. Charleston, 27 U. S. 2, Pet. 449. The ordinance of the City of Charleston was involved and a levy was attempted to be made upon the interest from the bonds and not upon the bonds. It was held that a tax on the income of the United States securities was a tax on the securities themselves, and that an income tax upon the interest of the bonds was not sustainable, although Mr. Justice Thompson and Mr. Justice Johnson dissented from that view. In the Pollock case there was also cited, the case of North Central Ry. Co. vs. Jackson, 74 U. S. 7, Wall 262 (19 L. Ed. 88) wherein it was held that a tax upon the interest payable on the bonds was a tax not upon the debtor, but upon the security. In view of the holding of the Supreme Court of the United States in the Pollock case, supra, that a tax upon the rents or income issuing out of the land is the same thing as a tax upon the real estate, it seems to me that by analogy the same reasoning is applicable when a tax is sought to be imposed upon that which comes from the corpus of the land in the way of bonuses, rentals and royalties from mineral reserves over which the Government imposed restrictions for the purpose of protecting the Indians from their own incompetency when, in fact, such bonuses, rentals and royalties constitute a permanent taking of the corpus of the land, a permanent depletion of the soil, a consumption of the mineral resources which reduces the mineral value and thereby produces a reduction of the value of land. See Cuff vs. Koslosky, 165 Okla. 135, 25 Pac. (2d) 290; State vs. [fol. 67] Snyder, 29 Wyo. 163, 212 Pac. 758; State v. Hatcher (Tex.), 281 S. W. 192; Work vs. U. S. ex rel. Mosier et al., 261 U. S. 352, 57 L. Ed. 693; Parker v. Riley, 250 U. S. 66, 63 L. Ed. 847.

Oil and gas in place are minerals and so long as they remain unsevered from the soil are a part of the corpus of the land. Cuff vs. Koslosky, supra. In that case it was said:

"After oil and gas have been discovered and produced from the premises under either the oil and gas lease or the mineral deed, the corpus of the land becomes changed and depleted in proportion to the amount of the oil and gas lifted, captured, and severed from the soil. The removal of a portion of the corpus of the land from its unseen mineral reservoirs is not replaceable. After this removal, depletion, or production, there has been to that extent an alienation and dismemberment of the common-law freehold estate in the land."

The rights in the minerals are valuable property rights, Meriwether vs. Lovett, 166 Okla. 73, 26 Pac. (2d) 200. These minerals, when removed from the corpus, deplete and dismember the soil and in that respect are unlike grass, growing crops and fruits reproducing themselves.

The usual oil and gas mining lease is equivalent to a license to take from the corpus of the land that portion of the corpus of the land itself as consists of the oil and gas to be taken under the lease as though it were an out and out sale of that particular portion of the corpus of the land. State vs. Hatcher, supra, citing Gowan vs. Christie, L. R. 2 Sc. App. 284; Leake's Law of Property in Land, Vol. 2 Page 55. It must be remembered that these mineral resources are not confined to the land, allotted in severalty, under the Act of 1906, supra, but these rights and reserves are tribal interests and not interests in severalty. The mineral resources were never divided in severalty. The owner of the land of an Osage Allotment does not individually own the minerals thereunder. These reserves remain as tribal property and the free right of alienation of such reserves or property rights in same, without question, have never been consented to by Congress directly or indirectly. Even under the Act of April 12, 1924, (43 Stat. L. 94), a person not of Indian blood could not sell his right to, or interest in, the lands, monies, or mineral interests of the tribe without the approval of the Secretary of the Interior. The granting of a certificate of competency did not remove the restrictions imposed on the mineral reserves.

Mr. Chief Justice Taft, in the Works case, supra, in discussing the bonus which was paid for an oil and gas lease secured from members of the Osage tribe said:

"It was, in effect, a supplement to the royalties already determined. * * *

Of course, it involved a consumption and reduction of the mineral value of the land, but so does a royalty."

In the case of Parker vs. Riley, supra, Mr. Justice Van [fol. 68] Deventer, discussing an oil and gas lease in that case, stated that the minerals, (Oil and Gas) were part of the homestead.

In the case of Superintendent of the Five Civilized Tribes, for Sandy Fox, Creek No. 1263, vs. Commissioner of Internal Revenue, Case No. 817, October Term, 1934, Mr. Justice McReynolds in speaking for the Supreme Court of the United States said:

"* * * The general terms of the taxing act include the income under consideration and if exemption exists it must derive plainly from agreements with the Creeks or some Act of Congress dealing with their affairs.

Neither the Creek agreement of 1901, nor the supplemental agreement (1902) conferred general exemption from taxation upon Indians; homesteads only were definitely excluded, although alienation of allotted lands was restricted.

The suggestion that exemption must be inferred from the Act of April 26, 1906 (34 Stat. L. 137) or May 27, 1908 (35 Stat. L. 312) is not well founded. The first of these extended restrictions upon the alienation of allotments for twenty five years unless sooner removed by Congress, and provided: "Sec. 19—. That all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as the title remains in the original allottee." This exemption related to land and not to income derived from investment of surplus income from land. Moreover, the Act itself was superseded by the second one which did not contain the quoted provisions, but declared; "Sec. 4. That all lands from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Trives. * * *."

We find nothing in either act which expresses definite intent to exclude from taxation such income as that here involved. See Shaw vs. Oil Corp., 276 U. S. 575, 581."

The majority opinion relies upon that case, but I construe that case as distinguishable from the facts at bar.

We are not considering the same character of a case. In that case funds which had been derived from a restricted allotment of a full blood Creek Indian were invested and Mr. Justice McReynolds very properly said:

"that if exemption exists it must derive plainly from agreements with the Creeks, or some act of Congress dealing with their affairs."

It that opinion it was pointed out that the exemption related to the land and not to the income derived from the investment of a surplus income from land. Under the facts in the instant case we are not concerned with income of that class and character. The term "income" as so used was given its ordinary meaning. In the case at bar it is in my opinion that the common acceptation of the meaning [fol. 69] of the term 'income' cannot be correctly extended to cover bonuses, rentals and royalties derived from restricted oil and gas mining leases of the Osage Tribe. In the instant case we are concerned with the restricted mineral resources of the Osage Tribe and the tax sought to be imposed upon the distributed funds in question is equivalent to a direct tax upon the bonuses, rentals and royalties which constitute a component and integeral part of the restricted mineral resources. These mineral reserves and the right of participating in the distribution of the funds therefrom under the provisions of the Allotment Act of June 28, 1906, and aets amendatory thereof and supplemental thereto are inalienable, whether the headright is owned by Indians with certificates of competency, or by Indians without certificates of competency, the sole exception as to alienability being that under the Act of 1924, headrights, when owned by persons not of Indian blood, may be sold with the consent and approval of the Secretary of the Interior, a headright being the right of enrolled members of the tribe, or their heirs, to share in the distribution of the funds received from the oil, gas and mineral received from bonuses, rentals and royalties paid on oil and gas mining leases given by the tribe under the approval of the Secretary of the Interior. Denoya vs. Arrington, supra, Taxes are not debts. See. City of Sapulpa vs. Land, 101 Okla. 22, 223 Pac. 640. They become an enforceable lien on the property on which they were exacted. How could such a tax be enforced against an incompetent Indian by

the State? The State can not impose an income tax upon the income of Liberty Bonds of a competent or incompetent Osage Indian, which were purchased through the United States Government, nor can the State impose an income tax upon the salaries of the Federal Judges who reside within the State. The principle is analagous to the instant question. The Liberty Bonds and income therefrom are exempt from taxation. Likewise, the mineral resources are exempt as well as the proceeds therefrom. The State is without power to sell these mineral reserves or enforce any tax against the same. These resources are federal instrumentalities, and it is fundamental that federal instrumentalities may not be taxed by a state. McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579; Weston v. Charleston, 2 Pet. 449, 7 L. Ed. 481; New York Bank of Commerce v. Commissioners of Taxes & Assessments, 2 Black 620, 17 L. Ed. 451; Collector v. Day, 11 Wall. 113, 20 L. Ed. 122; Choctaw, Oklahoma & Gulf R. R. Co. vs. Harrison, 235 U. S. 292, 135 S. Ct. 27, 59 L. Ed. 234; Indian Territory I. Oil Co. v. Oklahoma, 240 U. S. 522, 36 S. Ct. 453, 60 L. Ed. 779; Howard vs. Gypsy Oil Co., 247 U. S. 503, 38 S. Ct. 426, 62 L. Ed. 1239; Large Oil Co. v. Howard, 248 U. S. 549, 39 S. Ct. 183, 63 L. Ed. 416; Gillepsie v. Oklahoma, 257 U. S. 501, 42 S. Ct. 171, 66 L. Ed. 338; Northwestern Mutual Life Insurance Co. v. State of Wisconsin, 275 U. S. 136, 48 Sup. Ct. 55, 72 L. Ed. 202. To impose the questioned tax in the instant case would be placing a burden and direct charge upon the exempted principal,—the corpus, the mineral resources, the bonuses, rentals and royalties.

It is my conclusion that Congress has not released its control over the mineral resources of the Osage Tribe of Indians by granting a certificate of competency to a member of that tribe; that the tax in question is nothing short of a direct tax upon that which constitutes an integral part of the corpus of the restrictive mineral resources, the very [fol. 70] security itself, a federal instrumentality devised for the care and protection of the members of said tribe against their own prodigality; and that such a tax is void and not sustainable, being in violation of the acts of Congress dealing with the affairs of the Osage Tribe of Indians, as well as the Constitution of Oklahoma, article I, section 3, and article 10, section 6.

For these reasons I dissent.

I am authorized to announce that Mr. Vice Chief Justice Osborn and Mr. Justice Riley concur in this dissent.

[fol. 71] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

MOTION FOR STAY OF MANDATE—Filed Sept. 26, 1935

Comes now the plaintiff in error above named and represents and shows to the court that on Sept. 25, 1935, this court by order duly entered, denied the petition of plaintiff in error for a rehearing in said cause. Plaintiff in error desires and intends to apply to the Supreme Court of the United States for a Writ of Certiorari to this court commanding it to send up the record in said cause to that court for review. The time allowed by law for filing said petition for Writ of Certiorari is three months from said Sept. 25, 1935, and with all reasonable diligence on the part of plaintiff in error, said petition, supporting brief and transcript of the record could not be printed and served on opposing counsel and filed in less than sixty days from said date and probably in not much less time than the statutory period.

Plaintiff in error says it would be undesirable to both parties hereto to have the mandate of this court transmitted to the trial court prior to a ruling and decision of the Supreme Court of the United States on said petition [fol. 72] for writ of certiorari, and if said writ be granted, then before final decision by said court in the cause.

Wherefore plaintiff in error prays that this court make and enter an order staying the issuance of the mandate in this cause to the lower court pending the filing by plaintiff in error of his petition for writ of certiorari in the Supreme Court of the United States, and upon the filing thereof and the giving of notice thereof by the Clerk of the Supreme Court of the United States to the Clerk of this court on or before Nov. 23, 1935, that such mandate be stayed until a final decision is made by the Supreme Court of the United States in said certiorari proceedings.

C. S. Macdonald, Attorney for Plaintiff in Error.

[fol. 73] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER STAYING MANDATE—Filed Sept. 26, 1935

Now, on this 26 day of Sept., 1935, upon application of the plaintiff in error, and for good cause shown, it is ordered that the mandate in this case be stayed for a period of sixty days to enable plaintiff in error to file his petition for a writ of certiorari in the Supreme Court of the United States, and if such petition is filed within such time then made is to be stayed until said proceedings in certiorari are finally determined.

Edwin R. McNeill, Chief Justice.

[fol. 74] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 75] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 6, 1936

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.